



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

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January 13, 2023

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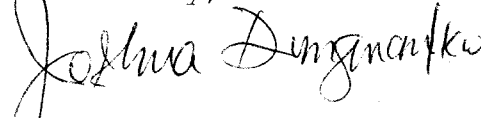
Re: Appeal No. 21826 / Decision No. 18226

Dear Sir/Madam:

Enclosed is a copy of the decision of the Commissioner of Education in the above-referenced appeal.

In a case where the decision must be filed with the school district clerk, a duplicate original is being provided to the district's counsel for that purpose.

Sincerely,

  
Joshua Dingman  
Appeals Coordinator

Enclosure



No. 18226

**The University of the State of New York**  
**The State Education Department**  
**Before the Commissioner**

Appeal of VANDANA CHAK, from action of the  
New York State Education Department's Office of  
Special Education.

Petitioner challenges a determination of the New York State Education Department's Office of Special Education ("SED") that she engaged in misconduct and acted incompetently during a special education due process hearing. The appeal must be dismissed.

Given the disposition of this appeal, a complete recitation of the facts is unnecessary. Prior to the events giving rise to this appeal, SED certified petitioner to conduct special education due process hearings. SED received a complaint dated February 10, 2022 against petitioner with respect to a due process hearing over which she presided.<sup>1</sup> Following an investigation thereto, SED determined that several allegations were substantiated and warned petitioner that "subsequent findings of misconduct or incompetence and/or failure to comply with required procedures may result in further corrective action or conditional suspension or revocation of your certification." This appeal ensued.

Petitioner challenges the outcome of SED's investigation and maintains that SED lacked jurisdiction to address several of the allegations raised in the complaint.

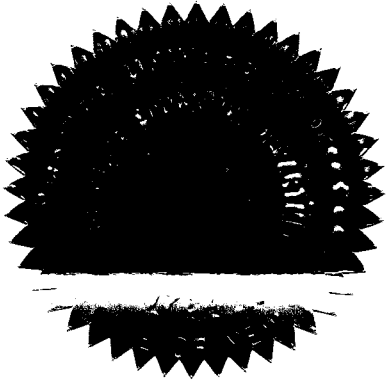
The appeal must be dismissed for lack of jurisdiction. It is well settled that Education Law § 310 does not authorize an appeal to the Commissioner from actions taken by members of the staff of the State Education Department (*Appeal of Keating*, 59 Ed Dept Rep, Decision No. 17,773; *Appeal of Carmel Academy*, 56 *id.*, Decision No. 16,976; *Appeal of the School for Language and Communication Development*, 46 *id.* Rep 536, Decision No.

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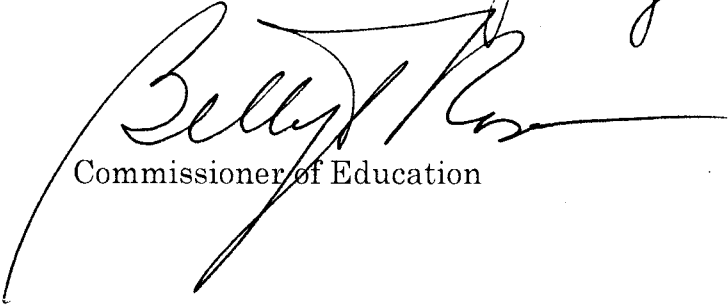
<sup>1</sup> Consistent with 8 NYCRR 200.21 (b), the complaint alleged misconduct and challenged petitioner's competence as an impartial hearing officer.

15,586). Such actions can only be challenged in a proceeding brought in a court of competent jurisdiction pursuant to Article 78 of the Civil Practice Law and Rules.

THE APPEAL IS DISMISSED.



IN WITNESS WHEREOF, I, Betty A. Rosa, Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 12<sup>th</sup> day of January 2023.

  
Commissioner of Education